

REQUEST FOR COUNCIL ACTION

MEETING
DATE: 1/1/03

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AGENDA SECTION: Reports & Recommendations	ORIGINATING DEPT: City Administrator	ITEM NO. F-1
ITEM DESCRIPTION: Findings of Fact for Restricted Development #02-54 (Paul Myhrom)		PREPARED BY: T. Spaeth

At the January 6, 2003 City Council meeting, the Council held a public hearing to consider the request for approval of a Restricted Development #02-54 (Paul Myhrom) concerning property located at 2311 South Broadway.

Upon review of the record, the City Attorney has prepared findings of fact and conclusions of law and order relating to said request. Attached for the Council's review are the findings of fact prepared by the City Attorney.

ATTACHMENTS:

- Copy of City Attorney prepared Findings of fact and Conclusions of Law dated January 14, 2003.

COUNCIL ACTION REQUESTED:

The Council may adopt, modify or revise the findings of fact, conclusions of law and order as needed.

COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____

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OFFICE OF THE CITY ATTORNEY
MEMORANDUM

DATE: January 14, 2003
TO: Stevan E. Kvenvold – City Administrator
FROM: Terry L. Adkins – Rochester City Attorney TLA
SUBJECT: Findings of Fact for Restrictive Development #02-54 (Paul Myhrom)

On January 6, 2003, the Council held a public hearing to consider the request for the approval of Restrictive Development #02-54 (Paul Myhrom) concerning property located at 2311 South Broadway. Following the hearing, the Council directed me to prepare draft Findings of Fact, Conclusions of Law and Order and to bring this document back to the Council for its review and consideration. As further instructed by the Council, I prepared the Findings document so as to deny the request for approval.

I enclose that draft document for presentation to the Council. The Council may adopt, reject or modify the document as it pleases.

Enclosure

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BEFORE THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA

In Re: Restricted Development
Preliminary Plan #02-54

Findings of Fact,
Conclusions of Law,
and Order

On December 9, 2002, and January 6, 2003, public hearings were conducted, upon notice to the public, before the Common Council of the City of Rochester to consider the Planning and Zoning Commission's recommendation resulting from its public hearing held on November 13, 2002, in response to an application for a Restricted Development Preliminary Plan (#02-54). At the hearing, public testimony was offered in favor of and in opposition to the application.

At the public hearings, the Council received and considered that written information contained in Exhibit "A", which is attached and incorporated herein. Based upon the oral and written evidence presented at the hearings, the Common Council of the City of Rochester does hereby make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The Applicant originally applied for a Type III, Phase II, Restricted Development Preliminary Plan #02-54 to permit the construction of a 4,224 square foot building to be used for a retail business (bike shop). The property is located at 2311 South Broadway and is located in the R-2 zoning district (low density residential). Since a retail business is not a permitted use in the R-2 zoning district, the Applicant has proposed the development by way of the restricted development provisions.

2. At the December 9, 2002, public hearing, the Applicant submitted a revised proposal. The revised proposal involved a 3,520 square foot building rather than a 4,224 square

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foot building. The revised proposal included 853 square feet of retail sales area, 344 square feet of storage and 246 square feet for a workshop on the first floor. The second floor would be used for storage.

3. R.C.O. §62.700 recognizes that certain land uses which are generally not allowed within a given zoning district can, if regulated, "serve both the public interest and allow a more equitable balancing of private interests than that achieved by strict adherence to standard zoning regulations."

4. At its November 13, 2002, public hearing on this application, the Planning and Zoning Commission considered the issue of whether the applicant's restricted development plan satisfied the conditions of ROCHESTER, MINN., CODE ORDINANCES §62.708.

5. R.C.O. §62.708 provides that a review of a preliminary development plan must ensure that the following matters are considered:

1) Preliminary Development Plan Criteria:

- a) Capacity of Public Facilities: The existing or future planned utilities in the area are adequate to serve the proposed development.
- b) Geologic Hazards: The existence of areas of natural or geologic hazard, such as unstable slopes, sinkholes, floodplain, etc., have been identified and the development of these areas has been taken into account or will be addressed in the Phase II plans.
- c) Natural Features: For developments involving new construction, the arrangement of buildings, paved areas and open space has, to the extent practical, utilized the existing topography and existing desirable vegetation of the site.
- d) Residential Traffic Impact: When located in a residential area, the proposed development:
 - 1) Will not cause traffic volumes to exceed planned capacities on local residential streets;
 - 2) Will not generate frequent truck traffic on local residential streets;

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- 3) Will not create additional traffic during evening and nighttime hours on local residential streets;
- e) **Traffic Generation Impact:** Anticipated traffic generated by the development will not cause the capacity of adjacent streets to be exceeded, and conceptual improvements to reduce the impact of access points on the traffic flow of adjacent streets have been identified where needed.
- f) **Height Impacts:** For developments involving new construction, the heights and placement of proposed structures are compatible with the surrounding development. Factors to consider include;
 - 1) Will the structure block sunlight from reaching adjacent properties during a majority of the day for over four (4) months out of the year;
 - 2) Will siting of the structure substantially block vistas from the primary exposures of adjacent residential dwellings created due to differences in elevation.
- g) **Setbacks:** For developments involving new construction, proposed setbacks are related to building height and bulk in a manner consistent with that required for permitted uses in the underlying zoning district.
- h) **Internal Site Design:** For developments involving new construction, the preliminary site layout indicates adequate building separation and desirable orientation of the buildings to open spaces, street frontages or other focal points.
- i) **Screening and Buffering:** The conceptual screening and bufferyards proposed are adequate to protect the privacy of residents in the development or surrounding residential areas from the impact of interior traffic circulation and parking areas, utility areas such as refuse storage, noise or glare exceeding permissible standards, potential safety hazards, unwanted pedestrian/bicycle access, or to subdue differences in architecture and bulk between adjacent land uses.
- j) **Ordinance Requirements:** The proposed development includes adequate amounts of off-street parking and loading areas and, in the case of new construction, there is adequate landscaped area to

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meet ordinance requirements.

- k) **General Compatibility:** The relationship of the actual appearance, general density and overall site design of the proposed development should be compared to the established pattern of zoning, the character of the surrounding neighborhood and the existing land forms of the area to determine the general compatibility of the development with its surroundings.

6. The Planning Department applied the criteria found at Section 62.708 to this application and prepared the following findings of fact:

1) **Preliminary Development Plan Criteria:**

- a) **Capacity of Public Facilities:** Utilities are available to serve the property. The property is within the Golden Hill High Level Water System Area. The static water pressure within this property ranges from the low to mid 90's PSI. The builder will need to install a pressure-reducing device near to domestic water meter as required by the Minnesota Plumbing Code. Any utilities that need to be relocated because of the building will be the cost of the applicant. There is an executed Utility Connection Agreement for this property.
- b) **Geologic Hazards:** This site is not known to contain any of the listed geologic hazards. No Wetlands are located on the site.
- c) **Natural Features:** The proposed location of the building is on relatively level ground. To the west of the proposed building there is an existing retaining wall and the property slopes up from that point.
- d) **Residential Traffic Impact:**
 - 1) The proposed use should not cause traffic volumes to exceed planned capacities on the existing roadway. The property gets its access of the frontage roadway of South Broadway which has a signalized intersection at 25th Street SW.
 - 2) According to information submitted by the applicant, deliveries occur on average 2 times per week. Occasionally there is a delivery of large supply of bicycles. These deliveries would be delivered to storage units. The property

takes its access from the frontage road of South Broadway.

- 3) The proposed development would create additional traffic during the evening hours on the frontage roadway which provides access to the property. There are a number of residential homes located on this roadway.
- e) **Traffic Generation Impact:** The proposed use should not cause traffic volumes to exceed planned capacities on the existing roadway. The property gets its access of the frontage roadway of South Broadway which has a signalized intersection at 25th Street SW.
- f) **Height Impacts:** The proposed height of the building is within the permitted height limits of the R-1 zoning district and would be similar in height to a 2 story single-family residence.
- g) **Setbacks:** The proposed building does not meet setback requirements consistent with other uses permitted in the R-1 zoning district. The proposed location of the building is located a couple of feet from the right-of-way for South Broadway.
- h) **Internal Site Design:** The proposed layout of the property does not meet standards of the City's Zoning Ordinance. The site plan identifies the parking for the use as being within the right-of-way of South Broadway. Currently the existing curb cut to the Frontage Road is approximately 108 feet in width. The maximum allowable curb cut is 32 feet in width.
- i) **Screening and Buffering:** The proposed site plan provides an "E" bufferyard along the north property line. This bufferyard is consistent with what would be required for nonresidential uses adjacent to a single-family residential unit in the R-1 zoning district.
- j) **Ordinance Requirements:** The proposed parking layout does not meet standards in the City of Rochester Zoning Ordinance and Land Development Manual. Using the aerial photographs and parcel maps it appears that the proposed parking is actually in the right-of-way for South Broadway. According to the Zoning Ordinance, parking must be provided on the lot and not within right-of-way. On the proposed site plan the right-of-way line would be approximately a line drawn west of the proposed parking spaces (see Exhibit B).

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- k) **General Compatibility:** The proposed expansion does not seem compatible with the existing neighborhood. The surrounding properties are all used for single-family residences. At one time this property had a commercial use on it, a roofing business, however the building housing the commercial use was torn down sometime during 1997 or 1998. Since that time the property has operated as a single-family use. The proposed site plan does not conform with the standards of the zoning ordinance pertaining to setbacks, parking and access openings. Maybe the site could be redesigned with a smaller building that would allow the parking to be all within the property being served by a single access opening which is only 32 foot wide instead of approximately 108 feet wide;

7. On November 13, 2002, the Rochester Planning and Zoning Commission held a public hearing on this restricted development preliminary plan, reviewed the application according to the requirements of Section 62.708, adopted the Planning Department's recommended findings of fact and recommended denial of the application.

8. At the December 9th and January 6th City Council public hearings, the Applicant and his representatives testified as follows:

- A. The Planning Commission probably acted appropriately in recommending the denial of this application as, at the time the Commission heard this matter, the plans were in a state of flux. Now, those plans are more definite and the Council can respond accordingly.
- B. The proposed building is only slightly larger than the existing residential structure.
- C. The failure to meet the required setback by only five feet is insubstantial. To correct the setback problem would involve moving the building into the hillside. The costs associated with such a process would far exceed the benefit acquired.
- D. Parking in the right-of-way could be permitted by revocable permit. The City has a history of granting revocable permits to solve similar problems in the past.
- E. A small bike shop with a modest operating procedure would be a harmonious use in an area of only a few residential houses located directly across the street from a large commercial use (Broadway Commons). There are no adverse traffic impacts or geological hazards associated with this application. The property had a commercial use for a number of years

prior to this application. In addition, the idea behind a restrictive development (allowing mixed uses) would not be furthered if the City concludes the mixing of commercial with residential uses is incompatible.

9. At the December 9th and January 6th City Council public hearings, those neighbors who lived in this area testified as follows:

- A. The application does not satisfy the criteria found at Section 62.708. The proposed development does not meet the required setbacks and fails to provide for parking on site outside of the right-of-way.
- B. This commercial use, no matter how small an operation it might be, is out of place amongst residential dwellings. There is an insufficient amount of property available for snow storage.
- C. Highway 63 provides a good and effective buffer between the large commercial use to the east and this residential area on the west. There is a distinct difference between the uses on either side of Highway 63. Approval of this development would breach that buffer.
- D. Two story buildings are not compatible with the neighborhood's existing residential dwellings. A two-story building would block sunshine from the residential dwelling immediately adjacent to the proposed development.
- E. Contact with those in the County Assessor's Office as well as real estate agents indicates that the development would probably not help, but could hurt, the existing properties' market values.
- F. Although there was a commercial use at this location sometime ago, today one finds grass and pine trees at this location. The grass and pine trees will go if the bike shop comes to this location.
- G. The intersection of 25th Street and Highway 63 cannot effectively handle the traffic generated by this bike shop at the proposed location.

10. In response to a question from Councilmember Senjem, Planner Brent Svenby stated that the current ordinance requires off-street parking for the building to be located on-site. The proposed development fails to meet this requirement as parking can only be provided within the right-of-way.

11. Councilmember Marcoux stated that, as part of the Highway 52 reconstruction project, the City refused to permit parking within the right-of-way. She stated it would be

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inconsistent for the City to grant similar permission in this case.

12. After listening and evaluating all of the testimony presented during the hearings, the Common Council concluded that the most persuasive evidence showed that:

- A. The proposed building does not meet setback requirements consistent with other uses permitted in the R-2 zoning district. The proposed building's setback from the Highway 63 South right-of-way does not comply with the existing ordinance.
- B. The proposed layout of the property does not meet standards of the City's Zoning Ordinance. The site plan identifies the parking for the use as being within the right-of-way of Highway 63 although the current ordinance requires parking to be provided on-site. The existing curb cut to the frontage road is approximately 108 feet in width. The maximum allowable curb cut is 32 feet in width.
- C. The proposed parking layout does not meet standards in the City of Rochester Zoning Ordinance and Land Development Manual. Using the aerial photographs and parcel maps it appears that the proposed parking is actually in the right-of-way for South Broadway. According to the Zoning Ordinance, parking must be provided on the lot and not within right-of-way. On the proposed site plan the right-of-way line would be approximately a line drawn west of the proposed parking spaces. The City has, in the past, refused to grant revocable permits to allow parking within the right-of-way as the City believes such an arrangement is inappropriate.
- D. The proposed expansion is not compatible with the existing neighborhood. The surrounding properties are all used for single-family residences. At one time this property had a commercial use on it, a roofing business. However the building housing the commercial use was torn down sometime during 1997 or 1998. Since that time the property has operated as a single-family use. The proposed site plan does not conform with the standards of the zoning ordinance pertaining to setbacks, parking and access openings. Highway 63 South does act as an artificial buffer between commercial uses to the east and residential uses to the west. Allowing a commercial use on the west side of Highway 63 South negates the beneficial buffer provided by the Highway.

CONCLUSIONS OF LAW

1. R.C.O. §62.708 provides that a review of a preliminary development plan must ensure that the following matters are considered:

1) Preliminary Development Plan Criteria

- a) Capacity of Public Facilities: The existing or future planned utilities in the area are adequate to serve the proposed development.
- b) Geologic Hazards: The existence of areas of natural or geologic hazard, such as unstable slopes, sinkholes, floodplain, etc., have been identified and the development of these areas has been taken into account or will be addressed in the Phase II plans.
- c) Natural Features: For developments involving new construction, the arrangement of buildings, paved areas and open space has, to the extent practical, utilized the existing topography and existing desirable vegetation of the site.
- d) Residential Traffic Impact: When located in a residential area, the proposed development:
 - 1) Will not cause traffic volumes to exceed planned capacities on local residential streets;
 - 2) Will not generate frequent truck traffic on local residential streets;
 - 3) Will not create additional traffic during evening and nighttime hours on local residential streets;
- e) Traffic Generation Impact: Anticipated traffic generated by the development will not cause the capacity of adjacent streets to be exceeded, and conceptual improvements to reduce the impact of access points on the traffic flow of adjacent streets have been identified where needed.
- f) Height Impacts: For developments involving new construction, the heights and placement of proposed structures are compatible with the surrounding development. Factors to consider include:
 - 1) Will the structure block sunlight from reaching adjacent properties during a majority of the day for over four (4) months out of the year;

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- 2) Will sitting of the structure substantially block vistas from the primary exposures of adjacent residential dwellings created due to differences in elevation.
- g) **Setbacks:** For developments involving new construction, proposed setbacks are related to building height and bulk in a manner consistent with that required for permitted uses in the underlying zoning district.
- h) **Internal Site Design:** For developments involving new construction, the preliminary site layout indicates adequate building separation and desirable orientation of the buildings to open spaces, street frontages or other focal points.
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- j) **Ordinance Requirements:** The proposed development includes adequate amounts of off-street parking and loading areas and, in the case of new construction, there is adequate landscaped area to meet ordinance requirements.
- k) **General Compatibility:** The relationship of the actual appearance, general density and overall site design of the proposed development should be compared to the established pattern of zoning, the character of the surrounding neighborhood and the existing land forms of the area to determine the general compatibility of the development with its surroundings.

2. The applicant's proposed development must be measured with the criteria set forth in R.C.O. §62.708.

3. By a substantial amount of the evidence and testimony presented at the December 9, 2002, and January 6, 2003, City Council hearings, it is hereby determined by the Common Council of the City of Rochester that the Applicant's Restrictive Development Preliminary Plan #02-54 does not comply with the requirements of §62.708 for the following

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Reasons:

- a) The proposed building does not meet setback requirements consistent with other uses permitted in the R-2 zoning district;
- b) The proposed layout of the property does not meet standards of the City's Zoning Ordinance as to internal site design;
- c) The proposed parking layout does not meet standards in the City's Zoning Ordinance as to the provision of on-site parking; and,
- d) The proposed development is not compatible with the existing neighborhood.

4. By a substantial amount of the evidence presented, the Common Council determined that there is a legal basis to accept the recommendation of the Planning and Zoning Commission.

ORDER

The Common Council of the City of Rochester, pursuant to R.C.O. §62.708, accepts the recommendation of the Planning and Zoning Commission and does hereby reject the Applicant's Type III, Phase II, Restrictive Development Preliminary Plan (#02-54).

Dated at Rochester, Minnesota this _____ day of January, 2003.

John Hunziker, President of the
Rochester City Council

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